

## Ajithkumar G Vs Salim

**Court:** High Court Of Kerala

**Date of Decision:** Jan. 7, 2025

**Hon'ble Judges:** Johnson John, J

**Bench:** Single Bench

**Advocate:** G.Radhakrishnan, P. Jacob Mathew, P Mathews Jacob

**Final Decision:** Allowed

### Judgement

”

Johnson John, J.”,,

1. The appellant was the petitioner in O.P.(MV) No. 91 of 2013 on the file of the Motor Accident Claims Tribunal, Attingal.”,,

2. According to the appellant, on 20.12.2012, at about 8 p.m., while he was riding a motorcycle, car bearing registration No. KL-01/AP-2665 driven by”,,

the 1st respondent in a rash and negligent manner caused to hit the motorcycle and thereby, he fell down and sustained grievous injuries. The 1st”,,

respondent is also the owner of the car and the 2nd respondent is the insurer.”,,

3. Before the Tribunal, Exhibits A1 to A15 were marked from the side of the petitioner and no evidence adduced from the side of the respondents.”,,

4. After trial and hearing both sides, the Tribunal found that the accident occurred because of the negligence on the part of the first respondent. The”,,

Tribunal awarded a total compensation of Rs.5,68,400/-to the appellant.”,,

5. The appellant is challenging the quantum of compensation fixed by the Tribunal as inadequate,,

6. Heard Sri. G. Radhakrishnan, the learned counsel for the appellant and Sri. P. Jacob Mathew, the learned Standing Counsel appearing for the”,,

respondent insurance company”,,

7. According to the appellant, he was aged 36 years at the time of the accident and having a monthly income of Rs.10,000/-. But, the Tribunal found”,,

that the appellant has not succeeded in proving the said monthly income and therefore, fixed a notional income of Rs.5,000/- per month for the purpose”,,

of calculating the loss of earning capacity”,,

8. The decision of the Hon'ble Supreme Court in Rina machandrappa v. Royal Sundaram Alliance Insurance,,

Co.Ltd. [(2011) 13 SCC 236] and Syed Sadiq and Others v. Divisional Manager, United India Insurance Company [(2014) 2 SCC 735 =,,

2014 KHC 4027] shows that even in the absence of any evidence, the monthly income of an ordinary worker has to be fixed as Rs.4,500/- in respect",,,

of the accident occurred in the year 2004 and for the subsequent years, the monthly income could be reckoned by adding Rs.500/- each per year. If",,,

the monthly income of the appellant is calculated by adopting the above principle, it will come to Rs.8,500/- as the accident occurred in the year 2012.",,,

9. The decision of the Hon'ble Supreme Court in National Insurance Co.Ltd. v Pranay Sethi [(2017) 16 SCC 680] and Jagdish v. Mohan,,

[(2018) 4 SCC 571] shows that the benefit of future prospects should not be confined only to those who have a permanent job and would extend to,,

self-employed individuals and in case of a self-employed person, an addition of 40% of the established income should be made where the age of the",,,

victim at the time of the accident was below 40 years.,,,

10. The treatment records of the appellant shows that he sustained the following injuries:,,

1. Open knee injury right " Type III B open fracture lateral femoral condyle, complete rupture quadriceps tendon, complete tear ACL/PCL/MCL.",,,

2. Type III C fracture dislocation right elbow (segmental fracture ulna),,,

3. Deep Laceration 20 x 10 cm over (R) knee exposing the femur.,,,

4. Laceration 20 x 10 cm over (R) Elbow.,,,

11. Exhibit A13 is the disability certificate issued to the appellant from Medical College Hospital, Thiruvananthapuram and it shows that he sustained",,,

27% permanent disability as per McBride's scale. In Exhibit A13, the following problems are noted:",,,

" Long scars on right elbow and right knee.,,,

Flap cover on posterior aspect of right elbow.,,,

There is partial ankylosis of right elbow.,,,

Fixed flexion deformity of 20 degrees of right elbow present.,,,

Further flexion only upto 100 degrees.,,,

Difficulty in taking food to mouth with right hand. Not able to touch same shoulder with right hand.,,,

Lateral ligament laxity of right elbow present with instability of elbow.,,,

Chronic oedema of right elbow present.,,,

Residual ulnar nerve palsy present with paraesthesia over little and ring finger of right hand.,,,

There is weakness of grip strength of right hand with Grade IV + power.,,,

Difficulty in writing. Pain and aching on use of right hand.,,

Swelling over right knee present.,,

Partial ankylosis of right knee with flexion limited to 100 degrees.,,

Extensor lag of 10 degrees of right knee present.,,

Severe crepitus, present, in, right, knee, with, pain, on, range, of movement.,,

Wasting of 2 cm of right thigh muscles.,,

Weakness of extension of right knee with Grade IV + power of quadriceps muscle.,,

Anterior cruciate ligament laxity present with positive anterior drawer test.,,

Shortening of 1 cm of right lower limb. Not able to squat.,,

Difficulty in climbing stairs and getting downstairs.,,

Not able to carry weight. ,,

In view of the above specific problems noted in Exhibit A13 disability certificate, the finding of the Tribunal that the doctor has not stated the reasons",,

for forming the opinion in Exhibit A13 is not correct.,,

12. In Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343], the Honourable Supreme Court summarised the principles for ascertainment of loss of",,

earning capacity due to permanent disability as follows:,,

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.".,,

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put",,

it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the",,

basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).",,

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to,,

the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.,,

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession",,

occupation or job, age, education and other factors.".,,

13. Considering the problems and difficulties faced by the appellant and taking note of the nature of injuries, percentage of physical disability and the",,

occupation of the appellant, I am of the view that 25% functional disability can be accepted for the purpose of calculating the compensation for loss of",,

earning power. When the compensation for loss of earning power due to permanent disability is calculated as per the above criteria, the same would",,

come to Rs.5,35,500/- [(8500 + 40%) x 12 x 15 x 25/100]. The Tribunal has already granted Rs.1,63,800/- as compensation under this head.",,

Particulars, "Compensation

awarded, , , , , , , ,

by, , , , , , , , the Tribunal

(Rs.)", "Additional amount

granted by this Court (Rs.)

Loss, , of, , ,

earning power, , , , ,

due, , , , , to permanent

disability", "1,63,800/-", "3,71,700/-

Pain and sufferings, "40,000/-", "10,000/-

Total enhanced compensation,, "3,81,700/-